

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUBEN TALAVERA,

Petitioner,

vs.

No. CV 18-00452 KG/SCY

FNU LNU, WARDEN, NORTHWEST
NM CORRECTIONAL FACILITY,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the handwritten letter filed by Petitioner Ruben Talavera, which the Court has construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1, 4) (“the Petition”). The Court will dismiss the Petition without prejudice for failure to comply with 28 U.S.C. §§ 1914 and 1915, failure to comply with Court orders, and failure to prosecute this case.

Petitioner, Ruben Talavera, filed this habeas corpus proceeding under § 2254 on May 14, 2018. (Doc. 1). Petitioner did not pay the \$5 filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On May 23, 2018, the Court ordered Petitioner to cure this deficiency within 30 days by either paying the \$5 filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 3 at 2-3). The Court also sent Petitioner the forms for submitting an application under § 1915. (Doc. 3 at 3). More than 30 days elapsed after entry of the Court’s Order to Cure Deficiency and Petitioner did not pay the \$5 filing fee, submit an application to proceed under § 1915, or otherwise respond to the Court’s May 23, 2018, Order.

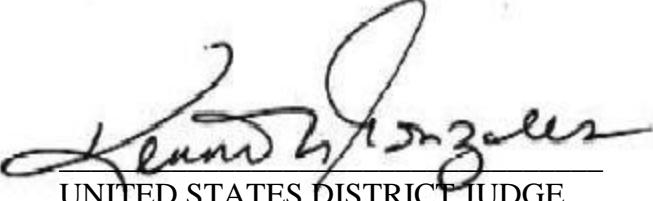
On July 13, 2018, the Court entered an Order to Show Cause. (Doc. 4). The Order directed Petitioner Talavera to show cause within 30 days why the case should not be dismissed for failure to comply with the Court's May 23, 2018, Order. (Doc. 4 at 2). More than 30 days has elapsed and Petitioner Talavera has not shown cause or otherwise responded to the Court's Order.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the federal filing fee from the Petitioner or authorize Petitioner to proceed without prepayment of the fee. Petitioner has failed to either pay the \$5 filing fee or submit an application to proceed under § 1915. The Court ordered Talavera to either pay the filing fee or submit an application to proceed under § 1915. The Court also provided Talavera with the § 1915 application form. (Doc. 3). Talavera did not pay the fee, file an application to proceed, or even respond to the Court's Order. When the Court ordered Talavera to show cause why the case should not be dismissed for failure to pay the fee, submit the application, or comply with the Court's Order, Talavera again did not respond to the Court's Order. (Doc. 4). Talavera has failed to comply with the requirements of 28 U.S.C. §§ 1914 and 1915, with the Court's May 23, 2018, Order to Cure Deficiency, and with the Court's July 13, 2018, Order to Show Cause.

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the statutes or rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with 28 U.S.C. §§ 1914, 1915, failure to comply with the Court's Orders of May 23, 2018, and July 13, 2018, and failure to prosecute this proceeding.

IT IS ORDERED that the handwritten letter filed by Petitioner Ruben Talavera, which the Court has construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, (Doc.

1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with 28 U.S.C. §§ 1914 and 1915 and with the Court's May 23, 2018, and July 13, 2018, Orders.



LEONARD W. ZALES
UNITED STATES DISTRICT JUDGE